

SERVED: August 18, 2000

NTSB Order No. EA-4851

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of August, 2000

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15987
v.)	
)	
ROYSTON B. WRIGHT,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty rendered in this proceeding on July 19, 2000, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator revoking all of respondent's airman certificates on allegations that he had falsified aircraft fuel

¹An excerpt from the hearing transcript containing the initial decision is attached.

records, in violation of section 61.59(a)(2) of the Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 61.²

The Administrator's June 16, 2000 Emergency Order of Revocation alleges, among other things, the following facts and circumstances concerning the respondent:

1. At all times material herein you were and are the holder of Flight Engineer Certificate Number 590162631, Mechanic Certificate Number 590162631, and Student Pilot Certificate Number EE3285209.
2. On or about November 30-December 1, 1999, you operated, as flight engineer, civil aircraft N427FB, a Douglas DC-8-54, from Miami, Florida (MIA), to Port-of-Spain, Trinidad (TTPP/POS), and then on to Granada, Windward Islands (TGPY/GND), and then on to MIA.
3. The above flights were operations under Part 121 of the Federal Aviation Regulations by Fine Air Services, Inc., holder of Air Carrier Certificate Number FXLA3015.
4. In connection with the above flights, you made or caused to be made a material fraudulent or intentionally false entry in the aircraft log for N427FB (page number 14051) in order to show that the fuel load in TTPP/POS, prior to departure, was 12,641 gallons (84,695 pounds).
5. In fact, you had knowledge that the true fuel load in TTPP/POS was 11,641 gallons (78,000 pounds).
6. N427FB flew from TTPP/POS to TGPY/GND on Fine Air Flight 617, and arrived there with a landing weight of 247,951 pounds, based on the fuel shown in paragraph four (4) above.

²FAR section 61.59(a)(2) provides as follows:

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made:

* * * * *

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part....

7. The above landing weight referenced in paragraph six (6) above at TGPY/GND was 7,951 pounds above the maximum structural landing weight as shown on the load sheet for the operation.

8. In connection with the above flights, you made, or caused to be made, material fraudulent entries as follows:

a. in the aircraft log for N427FB (page number 14051), to show that the fuel load in TGPY/GND was 11,343 gallons (76,000 pounds ramp fuel, which was 74,500 pounds takeoff fuel for this operation).

b. in the load sheet for N427FB (Fine Air Flight 618) to show that takeoff fuel was 74,500 pounds, which was 76,000 pounds ramp fuel for this operation.

9. In fact, you had knowledge that the true ramp fuel load in TGPY/GND was 10,343 gallons (69,300 pounds).

10. As a result, N427FB departed TGPY/GND for MIA on Fine Air Flight 618 with approximately 6,332 pounds less fuel than required by the flight plan filed.

11. During Fine Air Flight 618 to MIA, N427FB flew at a cruise speed of at least mach .78, which was above the long range cruise speed on which the flight plan was based.

12. As a result, N427FB burned more fuel than was anticipated based on the flight plan.

13. Upon Fine Air Flight 618 landing at MIA, it was discovered that N427FB had only 757 pounds of fuel aboard.

14. By reason of the above, N427FB was operated in a careless or reckless manner so as to endanger the life or property of another.

15. By reason of all of the above, you have demonstrated that you lack the care, judgment, and qualifications to be the holder of any airman certificate.

The Administrator maintained that the false statements constituted an attempt to conceal an overweight landing by the aircraft at Granada and a lack of sufficient fuel to complete the Granada-Miami leg. The law judge, after reviewing all the evidence and noting that the respondent did not deny having

falsified the aircraft log and load sheet as alleged, concluded that the Administrator had met her burden of proof on these allegations. He was not persuaded by the respondent's argument that he should not be held accountable for the false entries because the captain on the flights had, according to respondent, directed him to make them.³ Neither are we.⁴

On appeal, respondent argues, first, that the falsification charge cannot be upheld because he never certified or attested the truth of the documents on which the admittedly false information was entered. We find no merit in this contention. The regulation itself, without more, prohibits airmen from falsifying certain documents. It does not require for its proof additional evidence demonstrating that a falsifier also lied about the truthfulness of his or her entries by affixing a

³The captain, whose airman certificates were revoked as a consequence of regulatory violations he allegedly committed in connection with Fine Air Flights 617 and 618, did not testify in this proceeding, and we therefore cannot gauge the truth of respondent's accusations. Nevertheless, we think it appropriate to note, in the absence of any credibility assessment in respondent's favor by the law judge, that it would not have been in the respondent's best interest, as the aircraft's flight engineer, for the aircraft's records for the operation to have reflected unsafe aircraft loading or deficient fuel management. We note, in this regard, that while the record shows that the four-engine jet aircraft landed at Miami with only about 113 gallons (757 pounds) of fuel left in its tanks, respondent, without any asserted involvement of the captain, advised the first officer, whose testimony the law judge found credible, that there was about 10,000 pounds of fuel remaining (Tr. at 132).

⁴Although it has no direct bearing on the single charge in the order of revocation, the complaint here, the law judge appears not to have credited respondent's insistence that the captain had been unresponsive to his advice that they needed more fuel before attempting to complete the last leg of the flight.

signature to vouch for their veracity.

To be sure, an airman's signature is required on various documents prepared within the aviation industry, such as, notably, maintenance signoffs. However, such certifications generally serve only to identify for subsequent readers of the document the mechanic who performed the work it describes and his or her authority to accomplish it. They do not, so far as we are aware, usually include an express verification that the work the mechanic lists as having been done was in fact done. Rather, regulations such as FAR section 61.59 are intended to allow the users of the documents and records to which they apply to assume that the mechanics and other airmen who have filled out or prepared them have only entered information or made statements they believe to be correct and reliable. While it may be more difficult to track down an airman who has falsified a document he did not sign, we do not agree that an airman's regulatory duty to enter trustworthy information is dependent on the existence of an accompanying certification or attestation.

Respondent next argues that the revocation order should be reversed on the ground that the Administrator cited the wrong regulation, namely, one that applies to pilots and instructors, rather than the regulation that applies to flight engineers.⁵ Again, we find no merit in the argument. FAR section 61.59 is contained in the part of the Federal Aviation Regulations that

⁵The law judge had denied the Administrator's request, filed a week before the hearing, to amend her complaint to add the FAR provision that specifically applies to flight engineers.

applies to the certification of pilots, flight instructors, and ground instructors. Moreover, as respondent notes, Part 63 of the FAR does address certification of non-pilot flight crewmembers and contains, in FAR section 63.20, in language that closely tracks that found in FAR section 61.59, a prohibition against making intentionally false or fraudulent statements in certain specified documents. We do not see the coverage of these two provisions as mutually exclusive.

Respondent is a "person" within the meaning of FAR section 1.1, who admits that he entered false information in an aircraft log and a load sheet that the pilot and first officer on the Fine Air Flights needed to utilize in connection with the safe and proper operation of the flights in issue and the record-keeping obligations of the air carrier for which they worked. Since the captain and first officer were certificated under Part 61, the records respondent falsified plainly were, in the language of FAR section 61.59(a)(2), "used to show compliance with [a] requirement for the ... exercise of the privileges" of certificates issued under Part 61, namely, the pilots' certificates. In other words, the kind of certificate held by the person who commits the falsifications has no bearing under the regulation. What matters is whether that person's falsifications were used by a Part 61 certificate holder, which undoubtedly occurred in this instance. In these circumstances we see no reason to determine whether respondent may also have been chargeable under the parallel provision prohibiting falsification

of records in Part 63. We are satisfied that his conduct fell within the reach of Part 61.⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of.

revocation are affirmed.⁷

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

⁶FAR section 61.59(b) provides for the suspension or revocation of "any airman certificate" held by a person who violates section 61.59(a)(2).

⁷Respondent has not renewed here a challenge he made at the hearing level that the element of intent (to falsify the aircraft records) could not be proved because he was only following the captain's orders. We do not necessarily share the law judge's view that such a claim, which he termed a "Nurenberg" defense, could never defeat a finding of intent. At the same time, we do not construe the law judge's rejection of that defense to mean that he believed that the respondent was not a willing, knowing participant in an effort to hide from discovery weight and fuel anomalies for which he shared responsibility.